

TESTIMONY IN SUPPORT OF BILL HB0496 - FAVORABLE

Criminal Law - Sexual Crimes - Definition of Consent and Repeal of Force

TO: Chair Clippinger, Vice Chair Moon, and members of the Judiciary Committee

FROM: Wendy Novak, Carroll County, Maryland

February 9, 2024

I'm the mother of three children. Almost 8 years ago, my oldest became one of the 1 in 6 women that were the victim of an attempted or completed rape in her lifetime. Through my daughter's experience, I learned more than I ever wanted to know about the legal system and sexual assault. Our laws are out of date along with the public's understanding of sexual assault.

My family's world forever changed on May 6, 2016, when we got the call from the emergency room that our child had been assaulted. On the way there, I remember praying that it was something minor, like a slap. When we got to the hospital, I was prepared to be delayed by administrative issues, like HIPAA, or maybe they would be too busy to help us, they wouldn't know where she was. When we were immediately sent back, I knew it must be serious. When they brought us to her, we could only look at her through the glass wall, we couldn't touch her yet. Imagine that your child is covered in dirt, crying and in a hospital gown, obviously the victim of violence, and you can't touch her. When I saw her, I knew what had happened. After what seemed like forever, we were allowed into the room with her. Despite how gentle the detectives were with her; it was still hard to hear her description of what happened. My daughter thought it was a student at the local private college. My reaction was to jump ahead to how horrific the trial would be if the defendant was a student at a private college. I had to keep reminding myself to focus on that moment and simply hold my daughter's hand. When I walked with my daughter to the SAFE room, a volunteer escort from Care Healing Center was there, and surprised to see my daughter was not alone. Survivors are typically alone in the hospital. While my daughter was being examined, I was able to learn more details. The perpetrator was not a student, but a 38-year-old that had been released from serving a 19 year sentence the prior month, he had let his ankle monitor battery go dead. I felt more hopeful about a trial then. Surely, he would be on trial, not my daughter. My daughter was walking down the street with friends when he jumped out claiming he had a gun. He then kidnapped my daughter. The police found him on top of her. We were with my daughter during the meetings with the prosecutor about the case. My family was naïve enough to initially believe that any court case would be easy, he was a three-time offender that had continued to sexually assault people while in prison. My daughter was drunk and clearly unable to give consent. Yet, the prosecutor was concerned about the trial. He was concerned because jurors have so many wrong beliefs about sexual assault. The perpetrator's previous criminal history would not have been admissible for trial, but my daughter's sexual history would have been. People ignore the juror instructions; they blame the victim if they were drinking. People that knew my daughter, even loved her, would say to me, "well if she hadn't been drinking", or "if she hadn't been out that late" it wouldn't have happened. Our legal system is broken. The police witnessed the crime, and we still could not be sure of the conviction. One concern was whether it could be proven he said he had a gun. The difference in 1<sup>st</sup> degree or 2<sup>nd</sup> degree conviction made a difference in how much time he would have served, if any, or if he would go to a treatment facility where he could eventually be released.

The removal of the word force from the definition recognizes all that we have learned about trauma. We understand that it is not the survivor's responsibility to prevent the assault from happening. In my training with Healing Cares Center, I learned that the response to danger is not just "flight or fight", but "freeze" is another response. The current bill ignores the fact this fact that "freeze" is also a response to danger. People may shut down, they cannot move or speak, they may disconnect from emotions, or possibly pass out. This bill defines consent in a way that is necessary for understanding assault, without it, my daughter and other survivor's response is on trial, not the perpetrator's attack. Many of the people in the prospective jury pools received formal sexual education instruction decades ago, if at all. They may not have been taught that consent can be withdrawn at any time, that consent should not be assumed based on prior encounters. A clear definition of consent is needed. There should be a focus on whether there is a clear and voluntary agreement.

Society has a long way to go in understanding sexual assault. The current rape law reflects a time when we believed that a victim's dress counts as "asking for it" and a sexual encounter on a date without consent was simply considered "a bad date". We need to stop putting survivors on trial and hold the rapists accountable. We need the removal of "force or threat of force" and clear definitions for consent. It is not enough to simply have it in the jury instructions, the definition of consent should be in the law.

I urge you to pass a favorable report on House Bill 0496.